

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL )  
DEVELOPMENT PERMIT DENIED BY )  
SAN JUAN COUNTY TO WASHINGTON )  
STATE PARKS AND RECREATION )  
COMMISSION )

WASHINGTON STATE PARKS AND )  
RECREATION COMMISSION, )

Appellant, )

v. )

SAN JUAN COUNTY, )

Respondent, )

STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY and )  
SLADE GORTON, ATTORNEY )  
GENERAL, )

Amicus Curiae. )

SHB No. 123

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

THIS MATTER being a denial of a substantial development permit; having  
come on regularly for hearing before the Shorelines Hearings Board on the  
23rd and 24th days of January, 1975, at Friday Harbor, Washington; and

1 appellant, Washington State Parks and Recreation Commission, appearing  
2 through Darrel L. Peeples, assistant attorney general; respondent, San  
3 Juan County, appearing through its attorneys, John B. Nason and  
4 Michael Redmond, prosecuting attorney and Amicus Curiae, Department of  
5 Ecology and Attorney General, appearing through Robert V. Jensen,  
6 assistant attorney general; and Board member present at the hearing  
7 being Robert E. Beaty; and David Akana, presiding officer and the Board  
8 having read the transcript, exhibits, records and files herein and having  
9 entered on the 21st day of April, 1975, its proposed Findings of Fact,  
10 Conclusions of Law and Order, and the Board having served said proposed  
11 Findings, Conclusions and Order upon all parties herein by certified mail,  
12 return receipt requested and twenty days having elapsed from said service;  
13 and

14       The Board having received exceptions to said proposed Findings,  
15 Conclusions and Order from respondent, and having considered same and  
16 denied respondent's exceptions; and the Board being fully advised in  
17 the premises; now therefore,

18       IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
19 Findings of Fact, Conclusions of Law and Order, dated the 21st day of  
20 April, 1975, and incorporated by this reference herein and attached  
21 hereto as Exhibit A, are adopted and hereby entered as the Board's Final  
22 Findings of Fact, Conclusions of Law and Order herein.

23

24

25


26

27

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER

1 DATED this 19<sup>th</sup> day of June, 1975.

2 SHORELINES HEARINGS BOARD

3   
4 ROBERT E. BEATY, Member

5   
6 RALPH A. BESWICK, Member

7   
8 ROBERT F. HINTZ, Member

9   
10 WALT WOODWARD, Member

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
AND ORDER

1 CERTIFICATION OF MAILING

2 I, LaRene Barlin, certify that I deposited in the United States  
3 mail, copies of the foregoing document on the 19<sup>th</sup> day of June  
4 1975, to each of the following-named parties, at the last known post  
5 office addresses, with the proper postage affixed to the respective  
6 envelopes:

7 Mr. Darrel L. Paepples  
8 Assistant Attorney General  
9 Temple of Justice  
Olympia, Washington 98504

10 Mr. John B. Nason  
11 Attorney at Law  
Route #1, Box 32  
Lopez, Washington 98261

12 Mr. Michael Redman  
13 San Juan County Prosecuting Attorney  
San Juan County Courthouse  
14 1st & Court Streets  
Friday Harbor, Washington 98250

15 Mr. Robert V. Jensen  
16 Assistant Attorney General  
Department of Ecology  
17 St. Martin's College  
Olympia, Washington 98504

18  
19  
20   
21 LARENE BARLIN  
22 SHORELINES HEARINGS BOARD  
23  
24  
25

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
AND ORDER

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL  
DEVELOPMENT PERMIT DENIED BY  
SAN JUAN COUNTY TO WASHINGTON  
STATE PARKS AND RECREATION  
COMMISSION

WASHINGTON STATE PARKS AND  
RECREATION COMMISSION,

Appellant,

v.

SAN JUAN COUNTY,

Respondent,

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY and  
SLADE GORTON, ATTORNEY  
GENERAL,

Amicus Curiae.

SHB No. 123

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter was brought before the Shorelines Hearings Board  
(Board member Robert E. Beaty; and David Akana, presiding officer),  
on January 23 and 24, 1975 in Friday Harbor, San Juan County,

EXHIBIT A

1 Washington.

2 Appellant, Washington State Parks and Recreation Commission,  
3 was represented by Darrel L. Peeples, assistant attorney general;  
4 respondent, San Juan County, was represented by its attorneys,  
5 John B. Nason and Michael Redman, prosecuting attorney. The  
6 Department of Ecology and Attorney General, Amicus Curiae, appeared  
7 by and through Robert V. Jensen, assistant attorney general.  
8 Olympia court reporter, Louise Dustrude, recorded the proceedings.

9 Having read the transcript, having examined the exhibits, and  
10 having considered the contentions of the parties, the Board makes  
11 the following

12 FINDINGS OF FACT

13 I.

14 A substantial development permit application for the upgrading  
15 of Stuart Island State Park (formerly Reid Harbor State Park)  
16 on Stuart Island by the appellant, Washington State Parks and  
17 Recreation Commission (hereinafter "Parks") was denied without comment  
18 by respondent San Juan County (hereinafter "County") on January 3,  
19 1974. Parks thereafter timely filed its request for review with  
20 this Board on February 1, 1974. The request was duly certified by  
21 both the attorney general and the department of ecology. Subsequent  
22 discussions between the County and Parks revealed the reasons for  
23 the denial. Negotiations between Parks and the County followed, with  
24 proposals and counter proposals. After the formal reconsideration of  
25 the application by the Board of County Commissioners on October 1,  
26 1974, Parks was again informed of the continued denial of its

27 FINDINGS OF FACT,

CONCLUSIONS OF LAW AND ORDER

1 application. This denial is the subject matter of this request for  
2 review.

3 The parties stipulated as to the legal issues to be submitted  
4 to this Board for decision. One ground for denial of the application  
5 was based upon the inadequacy of the appellant's Final Environmental  
6 Impact Statement (EIS) in that (1) public service problems  
7 were not fully addressed, and (2) conclusions about the flushing  
8 action in Reid Harbor were not factually based.

9 The second ground for denial was that the project was contrary  
10 to WAC 173-16-060(21)(d), 173-16-040(4)(b)(ii), 173-16-040(5)(b,c,  
11 and d), and 173-16-050(4), and the County's draft master program,  
12 goals 3, 4, 6, and 7 (para. 1).

3 The appellant contends that there exists no grounds for  
14 denial and, further, asserts that by denying the application,  
15 respondent has acted inconsistently with RCW 90.58.020 (para. 3 and 4)  
16 and WAC 173-16-060(21)(a, b, g and h) and WAC 173-16-040(5)(a).

17 II.

18 Stuart Island is one of approximately 172 islands in San Juan  
19 County. Lying northwest of San Juan Island, Stuart Island is  
20 the westernmost island in the County. Because of this strategic  
21 location, Stuart Island is the springboard to and port of return  
22 from Canadian waters.

23 Stuart Island boasts two protected harbors -- Prevost Harbor  
24 and Reid Harbor. The latter harbor is the site at which Parks proposes  
25 to upgrade and develop.

26 The great majority of Stuart Island's 2.79 square mile area of real

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

property is privately owned. Except for the shorelines, the existing Stuart Island Park is surrounded by private lands. There are approximately 25 year-round residents living on Stuart Island. During the summer months the population swells to, perhaps, 100 residents. There is no telephone service or ferry service to Stuart Island. The existing park was developed in 1952.

### III.

A proposed development is described in the permit application as follows:

"Two floating moorages in Reid Harbor, a complete water system, eight additional overnight camp sites, limited boundary fencing, firebreak(s), pit toilets as described [in the Final Environmental Impact Statement]."

The above-described project is the proposed substantial development denied. This project would continue the primitive nature of the existing area. No long-term commitment of natural resources is involved in this development, and the area can be easily returned to its natural state.

Reid Harbor is a shoreline of state-wide significance.

### IV.

Family groups comprise the major users of the existing facility. Experience has shown that fewer people-control problems arise from this group classification of boaters than other types.

### V.

The final EIS states the following:

Use pressures within the existing state park developments

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER



on Reid Harbor may decrease with dispersion of usage resulting from the construction of additional use pads. At the present time, the existing dock-head area is sustaining overuse as evidence by soil compaction and vegetation damage. C.1.b., p.31.

. . . . .  
State Parks will continue to have a full time ranger attached to Stuart Island to control and regulate park users as well as to educate users to be good neighbors. To cope with increased usage, the Washington State Parks and Recreation Commission has additionally requested an allocation for another park aide and a ranger intern to assist the permanent staff during the times of heaviest use. C.2.b., p.32.

. . . . .  
Because of the excellent flushing action in Reid Harbor, no immediate problems of water quality are expected. C.3.b., p.33.

## VI.

Pleasure boaters are the primary beneficiaries of the existing and proposed facility. Experience has shown that relative to their actual numbers, boaters do not use the land portion of the park to the greatest extent possible. A significant number of boaters stop at Reid Harbor only for overnight moorage and for respite from a storm, and not necessarily to use the land facilities. No change in the nature or intensity of this use will result in the future as a result of the development of this project.

Present intensive use of localized areas in the park has resulted in environmental damage to these areas. However, the proposed project will disperse this present intensive use over more of the park area. In addition, the proposed two floating moorages will relieve the use pressure on the existing dock. The removal of this dock pressure will also relieve, to some extent,

the intensity of land use. The total effect of this proposed development would be to upgrade the environmental quality of the area.

## VII.

Trespassing upon private property by visitors is a present problem on Stuart Island. Although some of the trespassers come from the state park, others could come from the County dock at Prevost Harbor.

Although there are signs posted along the various trails leading out of the park, these signs do not significantly deter trespassing.

While instances of vandalism and malicious mischief occur on the island, the parties responsible for the damage are not known.

The provision for a full-time ranger stationed at the park, as opposed to "attached to" the park, will not reduce the incidents of trespass and vandalism outside the park. However, the proposed construction of fences along the boundaries of the park would significantly curtail potential trespass coming from the park.

The park ranger and his staff can provide emergency services when required. With the development of this park, an increased number of persons on the ranger's staff is expected. The anticipated number of persons appears adequate for the intended facility even though the ranger's responsibility will continue to cover three separate areas (Stuart, Jones and Posey islands).

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

VIII.

Although fires are potential problems both inside and outside the park, the fire-fighting capacity of the combined governmental task force appears adequate. Moreover, with the proposed firebreak on the southeast and the partial natural firebreak on the northwest, any fires in the park would be partially contained. Furthermore, these firebreaks would also operate to contain fires from spreading over the entire length of the island, thus incidentally benefiting the entire island.

IX.

The flushing action in Reid Harbor is very good. Theoretically, the bay is expected to completely flush once every 3-4 days. This flushing action is more than adequate for the planned facility.

X.

The Sheriff's office presently does not own an operating boat for inter-island travel. The four full-time officers now available to patrol the county must use other means of travel, e.g., ferry, unless a boat or an aircraft can be rented or borrowed. With the present means of communication and travel, assuring prompt police and emergency services to the many various San Juan County islands can be difficult for the Sheriff's office.

XI.

The San Juan County master program, so far as it can be ascertained at the time of the permit application, provides in part:

III RECREATION

GOAL:

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

TO ENCOURAGE DIVERSE, APPROPRIATE AND ADEQUATE WATER  
RELATED RECREATIONAL OPPORTUNITIES, WHICH ARE COMPATIBLE  
WITH THE ENVIRONMENTAL CARRYING CAPACITY OF THE AREA,  
ALONG THE SHORELINES. (p. 3).

IV CONSERVATION

GOAL:

TO ENABLE HUMAN ACTIVITY TO TAKE PLACE IN HARMONY  
WITH THE NATURAL ENVIRONMENT SO THAT THE BIOTIC  
PRODUCTIVITY AND SCENIC BEAUTY OF THE ISLANDS ARE  
NOT ONLY PROTECTED BUT, TO THE EXTENT POSSIBLE,  
ENHANCED. (p. 4).

VI PUBLIC ACCESS

GOAL:

TO ASSURE SAFE, CONVENIENT AND DIVERSIFIED ACCESS  
FOR THE PUBLIC ALONG PUBLIC SHORELINES, AND TO  
ASSURE THAT THE INTRUSIONS CREATED BY PUBLIC  
ACCESS WILL NOT ENDANGER THE QUALITY OF LIFE OR  
PROPERTY OF ISLAND RESIDENTS, OR HAVE ADVERSE  
EFFECTS ON FRAGILE NATURAL FEATURES OF THE  
SHORELINES. (p. 5).

VII CIRCULATION

GOAL:

TO DEVELOP SURE, SAFE, ECONOMICAL TRANSPORTATION  
SYSTEMS TO ASSURE EFFICIENT MOVEMENT OF PEOPLE,  
WITH MINIMUM DISRUPTION OF THE SHORELINE ENVIRONMENT  
AND MINIMUM CONFLICT BETWEEN DIFFERENT TYPES OF  
USERS.

POLICIES

1. In providing boat docking facilities the capacity  
of the shoreline sites to absorb the impact shall  
be considered. Private, common piers and docks  
shall be encouraged, while recognizing that good,  
natural moorage is a limited resource. (p. 6).

. . . . .

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

XII.

Any Conclusion of Law hereinafter recited which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Shorelines Hearings Board comes to these

CONCLUSIONS OF LAW

I.

The Board has jurisdiction over the persons and over the subject matter of this proceeding.

II.

The evidence clearly shows that the project design probably will disperse the use pressure of the existing facility over a wider area and improve the environmental quality of the Park. This design, which appears reasonable, need not insure such a result. We conclude that the final EIS is not deficient in this respect.

III.

In view of the expected increased control of people in the park by virtue of park design and park management, public services, including police services, fire protection services, and other emergency services appear adequate in light of the location of the park and the nature of the anticipated problems. Park rangers can and do provide emergency services when needed. Moreover, it is anticipated that the ranger's staff will be expanded thereby adding greater capacity for emergency services.

In view of the above, and in light of the type of physical area and nature of the problems reasonably anticipated, we hold

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

that the final EIS adequately addresses public services.

IV.

The shoreline permit process is not the proper vehicle to control trespass and nuisance throughout Stuart Island. The authority to control these problems resides in the police power of the county.

V.

The evidence shows that the flushing action of Reid Harbor is very good. From such evidence, we conclude that the statement in the EIS is factually supported and therefore adequate in this respect.

VI.

The total effect as a result of this proposed development would be to improve the environmental quality of the park area through proper design and management. As such, and with respect to the merits of the shoreline permit, we conclude that the project is consistent with WAC 173-16-060(21)(d)<sup>1</sup>, 173-16-040(4)(b)(ii)<sup>2</sup>, 173-16-040(5)(b,c and d)<sup>3</sup>, 173-16-050(4)<sup>4</sup>. (Footnotes on page 13) In view of the foregoing conclusion, and in light of the circumstances of this case, we cannot agree with the respondent that the above regulations can impose as a part of the consistency requirements of RCW 90.58.140(2)(a), the condition of the applicant's providing adequate public services.

Likewise, we conclude that the project is consistent with the San Juan County draft master program so far as it could be ascertained at the time of permit denial. Again, we cannot agree that the master program, written pursuant to, and limited by, the Shoreline Management Act (SMA) (chapter 90.58 RCW), can impose

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 the condition of the applicant's providing adequate services.

2 In further support of its position, respondent cites  
3 *Bottun v. State*, 69 Wn.2d 751, 420 P.2d 352 (1966). In this case,  
4 the state's lakeside property was used to provide public access  
5 to a non-navigable private lake. The state was held to have an  
6 implied obligation to police and control those persons it allowed  
7 to use the lake. *Bottun* is distinguishable factually and by the degree  
8 of interference from the matter now before us. Notwithstanding these  
9 differences, respondent urges us to apply the *Bottun* principle to the  
10 park, presumably because the state allows the public to legitimately use  
11 a small portion of Stuart Island. We are not aware that this is the law  
12 and are loathe to extend this principle, even if we could, based upon  
13 facts of a case with limited effect to this case whose facts have far  
14 ranging implications, absent further guidance from the Supreme Court.

15 VII.

16 We hold that the proposed development is consistent with  
17 the policy of the SMA (RCW 90.58.020), the department of ecology  
18 guidelines, and the San Juan County draft master program so far  
19 as it could be ascertained at the time of the permit denial.

20 This permit application was denied on grounds not supported in  
21 the SMA and we conclude, therefore, that a permit should have been  
22 issued. This decision does not foreclose the respondent from seeking  
23 relief aside from the SMA, however.

24 VIII.

25 In view of our conclusions in the matter, we need not elaborate  
26 upon appellant's assertions.

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

IX.

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Board enters this

ORDER

This matter is remanded to respondent, San Juan County, with instructions to issue the substantial development permit forthwith.

DATED this 21<sup>st</sup> day of April, 1975.

SHORELINES HEARINGS BOARD

  
ROBERT E. BEATY, Member

  
RALPH A. BESWICK, Member

  
ROBERT F. HINTZ, Member

  
WALT WOODWARD, Member



1/ WAC 173-16-060(21)(d) provides:

"(d) Attention should be directed toward the effect the development of a recreational site will have on the environmental quality and natural resources of an area."

2/ WAC 173-16-040(b)(ii) provides in part:

"The objective in designating a conservancy environment is to protect, conserve and manage existing natural resources and valuable historic and cultural areas in order to ensure a continuous flow of recreational benefits to the public and to achieve sustained resource utilization."

"The conservancy environment is for those areas which are intended to maintain their existing character. The preferred uses are those which are nonconsumptive of the physical and biological resources of the area. Nonconsumptive uses are those uses which can utilize resources on a sustained yield basis while minimally reducing opportunities for other future uses of the resources in the area. Activities and uses of a nonpermanent nature which do not substantially degrade the existing character of an area are appropriate uses for a conservancy environment. Examples of uses that might be predominant in a conservancy environment include diffuse outdoor recreation activities, timber harvesting on a sustained yield basis, passive agricultural uses such as pasture and range lands, and other related uses and activities."

"The designation of conservancy environments should seek to satisfy the needs of the community as to the present and future location of recreational areas proximate to concentrations of population, either existing or projected. For example, a conservancy environment designation can be used to complement city, county or state plans to legally acquire public access to the water."

3/ WAC 173-16-040(5) provides in part:

"(c)(iii) Actively promote aesthetic considerations when contemplating new development, redevelopment or existing facilities or for the general enhancement of shoreline areas."

4/ WAC 173-16-050(4) provides in part that:

". . . (P)rojects should be planned with a more critical eye toward preserving the very qualities which make island environments viable systems as well as aesthetically captivating to humans."

P.S.  
Bulkhead  
fill

AF  
Library

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL )  
DEVELOPMENT PERMIT ISSUED BY )  
MASON COUNTY TO N. E. FRINT )

STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY and )  
SLADE GORTON, ATTORNEY GENERAL, )

Appellants, )

v. )

MASON COUNTY and N. E. FRINT, )

Respondents. )

SHB No. 128

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

THIS MATTER, the request for review of a substantial development permit issued to N. E. Frint for the construction of a bulkhead and fill for a recreational area having come on regularly for hearing before Board Members Chris Smith, W. A. Gissberg, Walt Woodward, Gerald D. Probst, Robert F. Hintz, and Robert E. Beaty on the 23d day of September, 1975, at Lacey, Washington and appellants Washington State Department of Ecology and Slade Gorton, Attorney General, appearing

1 through their attorney, Robert V. Jensen, Assistant Attorney General,  
2 and respondent N. E. Frint appearing through his attorney, Robert N.  
3 Gates, N. E. Frint also represented the Port of Hoodspport, respondent  
4 Mason County made no appearance, and the Board having considered the  
5 sworn testimony, the exhibits, the written arguments of counsel,  
6 records and files herein and having entered on the 18th day of December,  
7 1975 its proposed Findings of Fact, Conclusions of Law and Order, and  
8 the Board having served said proposed Findings, Conclusions and Order  
9 upon all parties herein by certified mail, return receipt requested and  
10 twenty days having elapsed from said service; and

11 The Board having received respondent's exceptions to its proposed  
12 Order and having considered and denied same;;

13 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
14 Findings of Fact, Conclusions of Law and Order dated the 18th day of  
15 December, 1975, and incorporated by this reference herein and attached  
16 hereto as Exhibit A, are adopted and hereby entered as the Board's  
17 Final Findings of Fact, Conclusions of Law and Order herein.

18 DATED this 19<sup>th</sup> day of February, 1976.

19 SHORELINES HEARINGS BOARD

20 Chris Smith  
CHRIS SMITH, Chairman

21 Robert E. Beatty  
22 ROBERT E. BEATTY, Member

23 W. A. Gisseberg  
W. A. GISSEBERG, Member

24 Robert F. Hintz  
25 ROBERT F. HINTZ, Member

26 Gerald D. Probst  
GERALD D. PROBST, Member

27 Walt Woodward  
WALT WOODWARD, Member

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

CERTIFICATION OF MAILING

I, Dolories Osland, certify that I deposited in the United States mail, copies of the foregoing document on the 19<sup>th</sup> day of February, 1976, to each of the following-named parties, at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. Robert V. Jensen  
Assistant Attorney General  
Department of Ecology  
St. Martin's College  
Olympia, Washington 98504

Mr. Robert N. Gates, Jr.  
Attorney at Law  
1083 S. Adams  
Olympia, Washington 98501

Mr. N. E. Frint  
P. O. Box 177  
Hoodsport, Washington 98548

Mason County Prosecutor  
Govey Building  
Shelton, Washington 98584

Board of County Commissioners  
Mason County  
Mason County Courthouse  
4th and Alder  
Shelton, Washington 98584

Mr. Lloyd Taylor  
Department of Ecology  
St. Martin's College  
Olympia, Washington 98504

Dolories Osland  
DOLORIES OSLAND, Clerk of the  
SHORELINES HEARINGS BOARD

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER